UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,051	12/31/2001	Montgomery C. McGraw	067856.0234	2284

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EXAMINER
REILLY, SEAN M

ART UNIT	PAPER NUMBER
2153	

DATE MAILED: 03/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/039,051	MCGRAW ET AL.
	Examiner	Art Unit
	Sean Reilly	2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 December 2001*.

2a)☐ This action is **FINAL.**   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-42* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-42* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *31 December 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some *   c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

This office action is a first action on the merits of this application. Claims 1-42 are presented for further examination.

Priority

1. The effective filing date for the subject matter defined in the pending claims in this application is 5/4/2001.

Specification

2. The specification is objected to for the following informalities: the specification should be updated to include the application number of co-pending application entitled *Console Information Server System and Method.*

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to

overcome an actual or provisional rejection based on a nonstatutory double patenting ground

provided the conflicting application or patent is shown to be commonly owned with this

application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal

disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37

CFR 3.73(b).

3. Claims 10-42 are provisionally rejected under the judicially created doctrine of obviousness-

type double patenting as being unpatentable over claims 1-13 and 17-31 of copending

Application No. 10/039129. Although the conflicting claims are not identical, they are not

patentably distinct from each other. Refer to the tables and remarks below for specific claim

mappings and further explanation.

4. This is a provisional obviousness-type double patenting rejection because the conflicting

claims have not in fact been patented.

Instant Application # 10/039051	Co-pending Application # 10/039129
10. A system, comprising: *a first computing device*, including a first console and a first console interface operable to transmit first console information associated with the first console;	1. A system, comprising: *a plurality of computing devices*, each computing device having a respective console, and a respective console interface; each console interface being operable to transmit console information associated with the respective console;

a *second computing device* coupled for communication with the first computing device, the second computing device having a memory module operable to receive the first console information;	a *console server* coupled for communication with the plurality of computing devices, the console server including a memory module;
and the memory module being further operable store the first console information.	and wherein the memory module is operable to receive and store at least a portion of the console information.

5.   Regarding claim 10, the limitation "a first computing device" does not the limit the claim scope to only one computing device; therefore "a plurality of computing devices" is within the scope of the claim and an obvious variant. Further in claims 12-13 an additional client computing device is claimed (third computing device), showing that the second computing device is capable of and does indeed communicate with more than one device (a plurality of computing devices) as in co-pending claim #1.

6.   The limitation "a second computing device" is interpreted to be synonymous with "a console server" in the co-pending application.

Instant Application # 10/039051	Co-pending Application # 10/039129
19. A method for storing console information, comprising:	17. A method for storing console information associated with a plurality of computing devices, each computing device having a

	respective console, and a respective console interface, comprising:
	coupling a console server for communication with a plurality of computing devices,
	the console server including a memory module;
transmitting console information associated with a console, from a console interface;	transmitting console information associated with the respective console, from the respective console interface;
receiving the console information at a memory module;	receiving the console information at the memory module; and
and storing the console information at the memory module.	storing, at least temporarily, the console information at the memory module.

Instant Application # 10/039051	Co-pending Application # 10/039129
23. A method for storing console information, comprising, a first computing device including a first console and a first console interface, and	17. A method for storing console information associated with a plurality of computing devices, each computing device having a respective console, and a respective console interface, comprising:
coupling a first computing device and a second computing device	coupling a console server for communication with a plurality of computing devices,

the second computing device including a memory module;	the console server including a memory module;
transmitting first console information associated with the first console from the first console interface to the memory module;	transmitting console information associated with the respective console, from the respective console interface;
receiving the first console information at the memory module; and	receiving the console information at the memory module; and
storing the first console information at the memory module.	storing, at least temporarily, the console information at the memory module.

Instant Application # 10/039051	Co-pending Application # 10/039129
27. Logic encoded in media for storing console information, the logic operable to perform the following steps:	22. Logic encoded in media for storing console information associated with a plurality of computing devices, each computing device having a respective console, and a respective console interface, the logic being operable to perform the following steps:
	couple a console server for communication with the plurality of computing devices, the console server including a memory module;
transmit console information associated with a console, from a console interface;	transmit console information associated with the respective console, from the respective

	console interface;
receive the console information at a memory module;	receive the console information at the memory module;
and store the console information at the memory module.	and store, at least temporarily, the console information at the memory module.

Instant Application # 10/039051	Co-pending Application # 10/039129
31. The logic encoded in media for storing console information associated with a *first computing device (plurality of computing devices)* which is coupled for communication with a second computing device, the first computing device computing a first console and a first console interface,	22. Logic encoded in media for storing console information associated with a plurality of computing devices, each computing device having a respective console, and a respective console interface, the logic being operable to perform the following steps:
and the second computing *(console server)* device including a memory module, the logic operable to perform the following steps:	couple a console server for communication with the plurality of computing devices, the console server including a memory module;
transmit first console information associated with the first console from the first console interface to the memory module;	transmit console information associated with the respective console, from the respective console interface;
receive the first console information at the memory module;	receive the console information at the memory module;

and store the first console information at the memory module.	and store, at least temporarily, the console information at the memory module.

Instant Application # 10/039051	Co-pending Application # 10/039129
35. A system for storing console information, comprising:	27. A system for storing console information associated with a plurality of computing devices, each computing device having a respective console, and a respective console interface, comprising:
	means for coupling a console server for communication with the plurality of computing devices, console server including a memory module;
means for transmitting console information associated with a console, from a console interface;	means for transmitting console information associated with the respective console, from the respective console interface;
means for receiving the console information at a memory module;	means for receiving the console information at the memory module;
and means for storing the console information at the memory module.	and means for storing, at least temporarily, a console information at the memory module.

Instant Application # 10/039051	Co-pending Application # 10/039129

39. A system for storing console information, comprising:	27. A system for storing console information associated with a plurality of computing devices, each computing device having a respective console, and a respective console interface, comprising:
means for coupling a first computing device *(plurality of computing devices)* and a second computing device *(console server)*, the first computing device including a first console and a first console interface, and the second computing device including a memory module;	means for coupling a console server for communication with the plurality of computing devices, console server including a memory module;
means for transmitting first console information associated with the first console from the first console interface to the memory module;	means for transmitting console information associated with the respective console, from the respective console interface;
means for receiving the first console information at a memory module;	means for receiving the console information at the memory module;
and means for storing the first console information at the memory module.	and means for storing, at least temporarily, a console information at the memory module.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7.   Claims 27-34 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

8.   Regarding claims 27-34, the limitation "*logic* encoded in media" reads on non-statutory subject matter. *Logic* is itself an abstract idea, which merely provides a manipulation of abstract ideas and is therefore non-statutory.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9.   Claims 4, 15, 21, 26, 29, 31-34, 37, and 42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

10. Regarding claims 4, 15, 21, 26, 29, 34, 37, and 42 the use of the term "periodic" or "periodically" renders each claim ambiguous. It is unclear whether periodic/periodically represents sending the requests at regular intervals or transmitting the requests from time to time intermittently. It is presumed periodically represents transmitting the requests intermittently.

11. Claim 31 recites the limitation "The logic encoded in media" in line 1. There is insufficient

antecedent basis for this limitation in the claim. It is presumed the claim should read "Logic

encoded in media."

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 10-13, 15-17, 19-21, 23-29, 31-37, and 39-42 are rejected under 35 U.S.C. 102(e) as

being anticipated by Othmer et al. (U.S. Patent Number 6,167,358; hereinafter Othmer).

13. Regarding claims 10, 23, 31, and 39, Othmer discloses a system and method comprising:

- ❑   a first computing device (Figure 1, client computers), including a first console and a

    first console interface operable to transmit first console information (black box data)

    associated with the first console (Col 5, lines 10-14);

- ❑   a second computing device (Figure 1, server) coupled for communication with the

    first computing device, the second computing device having a memory module

    operable to receive the first console information (Col 8, line 66 – Col 9, line 5); and

- ❑   the memory module being further operable store the first console information (Col 9,

    lines 2-3).

Regarding claims 19, 27, and 35 Othmer discloses a method for storing console information,

comprising:

- ❑ transmitting console information associated with a console (black box data), from a

    console interface (nub and transceiver, Col 8, lines 8-12 and Col 8, line 66- Col 9 line

    2);

- ❑ receiving the console information at a memory module (Col 8, line 66- Col 9 line 5);

    and

- ❑ storing the console information at the memory module (database 66, Col 9, lines 5-7).

14. Regarding claims 11, 24, 32, and 40, Othmer discloses the second computing device is

further operable to provide first historical console information to an operator of the second

computing device, wherein the first historical console information includes the stored first

console information (Col 9, lines 19-20).

15. Regarding claims 12-13, 25, 33, and 41, Othmer discloses the system accommodates

multiple computing devices including a third computing device (Col 4, lines 38-42). The

limitations of claims 12-13, 25, 33, and 41 are similarly drawn to the limitations of claims 10-11,

thus a similar rationale is used to reject them.

16. Regarding claims 15, 26, 34, and 42, Othmer discloses the second computing device (server)

is further operable to poll the first computing device periodically to request the transfer of at least

a portion of the first console information [through a configuration file sent from the server to a

client(s) (Col 12, lines 18-30), the server can request information to be collected and then sent to

itself (Col 12, lines 59-64)].

17. Regarding claim 16, Othmer discloses the first and second computing devices are coupled

over a distributed communications network (Figure 1).

18. Regarding claim 17, Othmer discloses the first computing device comprises a server

processing card (inherently within any computing device that is capable of "computing and

processing data").

19. Regarding claims 20, 28, and 36, Othmer discloses presenting historical console information

to a graphical user interface in response to a request from a user, wherein the historical console

information comprises the stored console information (Col 14, lines 29-32).

20. Regarding claims 21, 29, and 37, Othmer discloses transmitting periodic requests to the

console interface to transmit the console information to a computing device (server) coupled for

communication with the memory module [through a configuration file sent from the server (Col

12, lines 18-30), the server can make requests for information (Col 12, lines 59-64)].

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

21. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Othmer et al.

(U.S. Patent Number 6,167,358; hereinafter Othmer) and Wang et al. (U.S. Patent Number

6,662,226; hereinafter Wang).

22. Regarding claim 1, Othmer discloses a computing device, comprising:

- ❏   a console (Figure 2systems 54, 56, 58, 60, 62);

- ❏   a console interface operable to transmit console information associated with the
     console (nub, Col 8, lines 8-12 and Col 9, lines 50-54);

- ❏   a memory module operable to receive the console information (Figure 3, storage
     facilities); and the memory module being further operable to store the console
     information (Col 10, lines 54-58) for retrieval (Col 11, lines 42-46).

However, Othmer fails to disclose *an operator of the computing device* may retrieve the

stored console information. In a related art, Wang discloses storing console information (Wang,

Col 2, lines 4-9) for retrieval by an operator of the computing device (Wang Col 2, lines 12-14).

It would have been obvious to one of ordinary skill in the art at the time of invention to modify

Othemer's system to allow an operator of the computing device to retrieve stored console

information as disclosed by Wang, in order to allow a user to locally manage the stored console

information (Wang Col 2, lines 35-39).

23. Regarding claim 2, both Othmer and Wang fail to disclose the memory module comprises a

buffer. The Examiner takes Official Notice that it was well known in the art at the time of

invention to use buffered memory for storage so when the memory reaches capacity it can be

overwritten with new data. It would have been obvious to one of ordinary skill in the art at the

time of invention to use buffered memory in the combined Othmer and Wang system so when

the memory reaches capacity it can be overwritten with new data.

24. Regarding claim 3, Othmer discloses the memory module is operable to periodically

transmit historical console information to a server coupled with the computing device (Col 8,

line 66 – Col 9, line 2).

25. Regarding claim 4, Othmer discloses the server is operable to transmit periodic requests to the computing device to transmit the historical console information to the server [through a configuration file sent from the server (Col 12, lines 18-30) the server can specify when to transmit information to a server (Col 12, lines 59-64)].

26. Regarding claim 5, Othmer discloses the requests comprise interrupt driven or on demand requests (Col 5, lines 48-52).

27. Regarding claim 6, Othmer discloses the memory module is operable to transmit the historical console information to the server in response to an event (Col 12, lines 59-64).

28. Regarding claim 7, both Othmer and Wang fail to disclose the memory module is operable to transmit the historical console information to the server *at predetermined time intervals*. The Examiner takes Official Notice that it was well known in the art at the time of invention to schedule sending information from a client to a server at predetermined time intervals. It would obvious to one of ordinary skill in the art at the time of invention to modify the combined Othmer and Wang system to transmit historical console information to the server at predetermined time intervals, in order to ensure the server does not become overloaded with numerous clients transmitting data all at once.

29. Regarding claim 8, Othmer discloses the console information comprises real-time console information and the memory module is further operable to transmit real-time console information to a server coupled with the computing device (Col 12, lines 59-62).

30. Regarding claim 9, Othmer discloses the memory module is further operable to transmit the console information to a server coupled with the computing device over a distributed communication network (Figure 1).

31. Claims 14, 22, 30, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Othmer et al. (U.S. Patent Number 6,167,358; hereinafter Othmer) and Examiner's Official

Notice.

32. Regarding claim 14, Othmer fails to disclose the memory module comprises a buffer. The

Examiner takes Official Notice that it was well known in the art at the time of invention to use

buffered memory for storage so when the memory reaches capacity it can be overwritten with

new data. It would have been obvious to one of ordinary skill in the art at the time of invention

to use buffered memory in the Othmer system so when the memory reaches capacity it can be

overwritten with new data.

33. Regarding claims 22, 30, and 38, Othmer discloses transmitting the console information to a

computing device coupled for communication with the memory module (as cited above),

however Othmer fails to disclose transmitting such information at predetermined time intervals.

The Examiner takes Official Notice that it was well known in the art at the time of invention to

schedule sending information from a client to a server at predetermined time intervals. It would

obvious to one of ordinary skill in the art at the time of invention to modify the Othmer system to

transmit historical console information to the server at predetermined time intervals, in order to

ensure the server does not become overloaded with numerous clients transmitting data all at

once.

34. Claims 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Othmer et al. (U.S.

Patent Number 6,167,358; hereinafter Othmer) and Bassman et al. (U.S. Patent Number

6,408,334; hereinafter Bassman).

35. Regarding claim 18, Othmer fails to disclose coupling the first and second computing

devices for communication using an RS485 bus. In a related art Bassman discloses coupling

multiple computing devices for communication using an RS485 bus (Figure 1). It would have

been obvious to one of ordinary skill in the art at the time of invention to modify Othmer's

system to communicate using an RS485 bus as disclosed by Bassman, in order to allow for the

management of multiple computers via a single network line (Bassman Col 1, lines 49-52).

Conclusion

36. The prior art made of record, in PTO-892 form, and not relied upon is considered pertinent

to applicant's disclosure.

37. This office action is made **NON-FINAL.**

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Sean Reilly whose telephone number is 571-272-4228. The

examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Glen Burgess can be reached on 571-272-3949. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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2/18/2005
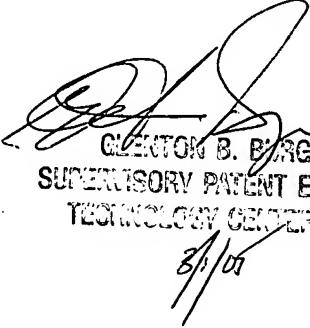
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